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WALTER OTTESEN PO BOX 4026 GAITHERSBURG, MD 20885-4026				
EXAMINER				
PECHIE, JORGE O				
ART UNIT		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/786,043

**Applicant(s)**

KLOTZBUECHER ET AL.

**Examiner**

Jorge O. Peche

**Art Unit**

3664

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 February 2009 and 21 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04/12/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Receipt is acknowledged of Applicant's request for continued examination and argument/remarks filed on February 17, 2009 and January 21, 2009, claims 11-20 are pending and an action on the merits is as follows.

Applicant's arguments with respect to claims 11-20 have been fully considered but are moot in view of the same ground(s) of rejection. Applicant has amended claims 11 and 20.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 11 and 20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The invention fails to disclose "the spring constant prevailing at the actual degree of displacement." Applicant should clearly define: (1) how the actual degree of displacement is calculated – the specification does not disclose any actual degree of displacement; (2) how the spring constant and the actual degree of displacement are correlated over a prevailing process – the specification does not disclose any process

where the spring constant prevailing at the actual degree of displacement (see page 1, line 25; page 2, lines 1-4, line 21, lines 25-30; page 3, lines 1-18; page 4, lines 5-6, lines 21-23; page 5, lines 15-20; page 6, lines 2-5, lines 26 - 28; page 7, line 15 - page 8, line 28).

**This rejection is presented in the best understanding of the claim limitations and in light of the specification.**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims **11** and **18-20** are rejected under 35 U.S.C. 102(b) as being unpatentable over **Kato et al. (Pub. No.: US 2003/0019278 A1)**.

Regarding **claim 11**, Kato discloses an accelerator pedal apparatus and method for adjusting accelerator pedal apparatus. The methods comprising the steps of:

- Realizing various output value corresponding to the fully closed, opened, and kick-down positions of the accelerator pedal (2) (different operator-controlled functions) in dependence upon different resilient engaging member (3) constants (the degree of displacement) as different type of forces are applied to the

accelerator pedal (2) (operator controlled element) (see page1, par. 5 & 7; page 3, par. 35-36; page 4, par. 44; Figures 1A-1C).

- Actuating accelerator pedal (2) against the resilient engaging member (3) force (spring force) with two degree of resilient engaging member being characterized by two different resilient engaging member constants (different spring constants) as it is depicted in Figure 1A and 1D respectively. The spring constant value varies as the applied force on the accelerator pedal (2) changes (a spring constant prevailing at the actual degree of displacement) (see page 3, par. 36; Figures 1A-1D).

- Detecting at least one of the fully closed, opened, or kick-down position of the accelerator pedal (2) (various operator-controlled functions of the operator-controlled element) in dependence upon resilient engaging member constant (quantity which characterizes the spring constant) assigned to the instantaneous degree of resilient engaging member. Figure 1D depicts stop vicinity position for the accelerator pedal (2) (see page1, par. 5 & 7; page 3, par. 34-36; page 4, par. 44; Figures 1A-1C).

Regarding **claim 18** refers to **claim 11**.

Regarding **claim 19**, Kato teaches a method for detecting at least one of the fully closed, opened, or kick-down position of the accelerator pedal (2) (various operator-controlled functions) in dependence upon resilient engaging member constant assigned to the instantaneous degree of resilient engaging member. In addition, Kato discloses a

method for detecting the kick-down position of the accelerator pedal (2) (at least one operator-controlled function) when its signal is detected several times within the kick-down position region (see page1, par. 5 & 7; page 3, par. 35-36; page 4, par. 44; Figures 1A-1C & 2).

Regarding **claim 20** refers to **claim 11**.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims **12-17** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kato et al. (Pub. No.: US 2003/0019278 A1)** in view of **Kuretake (Patent No.: US 6,293,249 B1)**.

Regarding **claims 12-13**, Kato discloses a method comprising the steps of:

- Detecting a continuous operational angular position of the accelerator pedal (2) (degree of displacement) by utilizing a pedal position measuring means (13) (see page 5, par. 47-48; Figures 2-3).

- Causing the pedal position measuring means (13) to generate a measurement signal in dependence upon a continuous operation angular position of the accelerator pedal (2) (see page 5, par. 47-48; Figures 2-3).

However, Kato's invention fails to disclose a method comprising the steps of determining a time-dependent course of said measurement signal; and, selecting a slope of said time-dependent course of said measurement signal as said quantity characterizing the spring constant; and, detecting said at least one operator-controlled function in dependence upon the slope of said measurement signal.

However, Kuretake teaches a unit for controlling electronically controlled throttle value comprising the step of determining the time dependant course of an amount of depression of acceleration pedal (see col. 6, lines 11-15; col. 7, lines 1-5; Figure 3A).

As Kato teaches a method for calculating and depicting the pedal pressing force and sensor output value in accordance to the pedal position (see page 5, par. 47-48; Figure 2), and Kuretake teaches a method for calculating and depicting the time dependant course of an amount of depression of acceleration pedal (see col. 6, lines 11-15; col. 7, lines 1-5; Figure 3A), it would have been obvious to one of ordinary skill in the art at the time was made to convert the pedal position values into a time reference scale as it is implemented in Kuretake's reference by simply calculating how fast the accelerator pedal takes to move from one point to another or how fast its rotational angle change.

Doing so would enhance an accelerator pedal apparatus capable to electronically control a throttle valve.

Furthermore, Kato, in view of Kuretake, teaches a method for detecting a various output values corresponding to the fully closed, opened, and kick-down positions of the accelerator pedal (2) (various operator-controlled functions) in dependence upon a slope of time-dependant, which can be calculated from the accelerator pedal position, of the continuous operational angular position of the accelerator pedal (2) (see page 5, par. 47-48; Figures 2-3).

In addition, Kato, in view of Kuretake, teaches a method for detecting at least one of the various output value corresponding to the fully closed, opened, and kick-down positions of the accelerator pedal (2) (various operator-controlled functions) when the slope of the time-dependent course of the continuous operational angular position of the accelerator pedal (2) lies with in the fully open position and kick-down position range of the continuous operational angular position of the accelerator pedal (2) (pre-given region) (see Figure 2).

Regarding **claim 14**, Kato teaches a fully open - kick-down position region to be defined by a measured and correction values (threshold values) (see page 6, par. 49; Figure 4).

Regarding **claim 15-17**, Kato, in view of Kuretake, teaches a method for selecting a fully open - kick-down position region to be defined by a measured and correction values so that the pedal position signal, which can be converted into a time-dependant scale, changes not only via its angle of rotation (via an automatic reset), but



also via the resilient engaging member constant of the accelerator pedal. The spring constant value of the resilient engaging member varies as the applied force on the accelerator pedal (2) changes (see (see page1, par. 5 & 7; page 3, par. 35-36; page 4, par. 44; page 6, par. 49; Figures 1A-1C & 24).

### ***Response to Argument***

In the Applicant's arguments filed on January 21, 2009 have been fully considered but are not persuasive.

Regarding Applicant's argument (page 8, par. 2), "The determination of the degree of displacement of the operator-controlled element is, however, affected by the above-mentioned error sources of wear and temperature drift of the sensor for determining the degree of displacement of the operator-controlled element as well as by the bearing play and deformation, especially the deformation of plastic parts of the operator-controlled element, so that an adjustment or balancing of the sensor is required for the determination of the degree of displacement of the operator-controlled element as is known, for example, from Kato et al. Such a balancing or adjustment is avoided with the applicants' invention." The Examiner respectfully disagrees; the above description is not in the claim language.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jorge O. Peche whose telephone number is (571)270-1339. The examiner can normally be reached on 8:30 am - 5:30 pm Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoi H. Tran can be reached on 571-272-6919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jorge O Peche/  
Examiner, Art Unit 3664  
April 28, 2009

/KHOI TRAN/  
Supervisory Patent Examiner, Art Unit 3664